

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** March 16, 2018

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2017-0866-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 114, Control of Air Pollution from Motor Vehicles
SB 1731: Light-Duty Motor Vehicle Purchase or Lease Incentive Program
Rule Project No. 2017-030-114-AI

Background and reason(s) for the rulemaking:

The Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP) was originally created by Senate Bill (SB) 5, 77th Texas Legislature, 2001, to establish a statewide incentive program for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements. The Texas Comptroller of Public Accounts (TCPA) was assigned to administer the program, while the Texas Commission on Environmental Quality (commission or agency) was responsible for establishing the program criteria and rules. Although the commission adopted rules for the program, initial funding levels were insufficient for the TCPA to implement the program during the 2002-2003 fiscal biennium. In subsequent years, the legislature did not appropriate funds to the TCPA to implement the program.

In 2013, the 83rd Texas Legislature enacted SB 1727 to substantially change the LDPLIP, including transferring the responsibility for implementation to the commission and establishing new eligibility criteria to provide incentives for the purchase or lease of vehicles powered by compressed natural gas, liquefied petroleum gas, or electricity. The revised program was authorized through August 31, 2015, and funding was appropriated by the legislature for the 2014-2015 fiscal biennium. The commission adopted program rules and implemented the program through the statutory expiration date.

In 2017, the 85th Texas Legislature enacted SB 1731 re-establishing the LDPLIP under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D, and including changes to the previous program criteria. A significant change included increasing the maximum incentive for a vehicle powered by compressed natural gas or liquefied petroleum gas from \$2,500 to \$5,000, while the maximum incentive for a vehicle powered by an electric drive remained at \$2,500. The bill also included language authorizing incentives for the purchase or lease of a new motor vehicle that has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first sale or within 500 miles of operation of the vehicle following first sale.

Scope of the rulemaking:

The adopted rulemaking would repeal and replace the rule language for the LDPLIP to incorporate the criteria established by SB 1731 under new THSC, Chapter 386, Subchapter D.

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A.) Summary of what the rulemaking will do:

The adopted rulemaking would repeal Chapter 114, Subchapter K, Division 2, §§114.610 - 114.612 and §114.616 and replace the repealed sections with new §§114.610 - 114.613.

Adopted §114.610 would establish definitions for key words and terms used in this division.

Adopted §114.611 would state that the provisions of Division 2 would apply statewide, subject to availability of funding. Criteria would also be adopted in this section to require that a purchase or lease of a new light-duty motor vehicle is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. These restrictions would not apply if, on the date the incentive is awarded, the vehicle change is not required. The restrictions would also not apply if the purchase or lease is required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

Adopted §114.612 would establish eligibility requirements and other requirements for applying for and receiving an incentive. Under the adopted criteria, a purchaser or lessee of a new light-duty motor vehicle may be eligible for an incentive if the vehicle meets the eligibility requirements and is included on the list of eligible vehicles provided to the commission. By August 1st of each year Division 2 is in effect and appropriations are available to fund the program, the commission would publish a list of eligible vehicles on its website. This section would also include criteria for vehicle owners to receive an incentive, including criteria for vehicles powered by compressed natural gas or liquefied petroleum gas and electric vehicles powered by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that has a capacity of not less than four kilowatt hours and is capable of being recharged from an external source of electricity.

Adopted §114.612 would also establish the eligible incentive amounts. A person who purchases or leases an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas may be eligible to receive a \$5,000 incentive. A person who purchases or leases an eligible new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive may be eligible to receive a \$2,500 incentive. The incentive for the lease of an eligible new light-duty motor vehicle would be prorated on a three-year term. The incentive for a one-year lease would be 33.3% of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount.

Under adopted §114.612, an eligible vehicle must have been acquired after the date established by the commission in the application solicitation. Requirements for completion and submission of the application for an incentive would also be established in this section. Also, the criteria would require that only one incentive would be provided for each eligible vehicle purchased or leased in this state and that the incentive would go to the lessee and not the purchaser if the vehicle is purchased for the purpose of leasing the vehicle to another person.

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Adopted §114.613 would establish requirements and procedures for a manufacturer of eligible new light-duty motor vehicles, an intermediate or final state manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems to submit a report to the executive director in order for the executive director to compile a list of eligible vehicles and systems. The report would need to include required information on the new light-duty motor vehicle models or natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation, that the manufacturer intends to sell in this state during the model year. The manufacturer would also be required to certify that the vehicle models or systems meet the eligibility standards under §114.612(a).

Under adopted §114.613, the manufacturer reports would need to be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1st of each year preceding the new vehicle model year. A manufacturer would also be authorized to supplement the required list to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

B.) Scope required by federal regulations or state statutes:

New §§114.610 - 114.613 are required to implement the provisions of the LDPLIP in THSC, Chapter 386, Subchapter D, as established by SB 1731.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Under THSC, §386.151(1), a "Light-duty motor vehicle" is defined as a motor vehicle with a gross vehicle weight rating (GVWR) of less than 10,000 pounds. Under THSC, §386.153(d), the commission by rule may revise the standards for the maximum unloaded vehicle weight rating and GVWR of an eligible vehicle to ensure that all of the vehicle weight configurations available under one general vehicle model may be eligible for an incentive.

Staff recommends a definition of "Light-duty motor vehicle" in §114.610 to include vehicles with a GVWR of "10,000 pounds or less." This revision to the statutory standard is intended to ensure that certain general pickup truck and van models that may include a vehicle configuration rated right at 10,000 pounds would be eligible for an incentive.

Statutory authority:

The rulemaking would be adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking would also be adopted under THSC, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to

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prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The rulemaking would be adopted as part of the implementation of THSC, Chapter 386, Subchapter D, as amended by SB 1731.

Effect on the:

A.) Regulated community:

This is a voluntary program. The adopted rulemaking is not anticipated to have any implications on the regulated community.

B.) Public:

Persons who purchase or lease an eligible new light-duty motor vehicle and who apply for an incentive would benefit from receiving the incentive. Automobile dealers and leasing companies that sell or lease new light-duty motor vehicles eligible for an incentive may benefit if the program encourages more persons to purchase or lease an eligible vehicle.

C.) Agency programs:

The adopted rulemaking would implement an incentive program that had ended in 2015 and is now being re-established. New program processes and materials would need to be developed, including application forms, manufacturer reporting forms, eligible vehicle lists, application review and approval processes, and payment processes.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a public hearing was held during the comment period.

Public comment:

The commission held a public hearing on December 11, 2017. The comment period closed on December 22, 2017. The commission received oral and written comments from 679 individuals and 53 organizations, including Allpro Consulting Group, Inc. (Allpro); Bourke & Associates (Bourke); BSA Amarillo Diagnostic Clinic (BSA); Buchanan Technologies (Buchanan); Circular Energy, Inc. (Circular); City of Austin, Public Works Department; CNG 4 America, Inc. (CNG4); Cooper General Contractors; DMMGT, LLC (DMMGT); dwg. (DWG); Dynamic Systems Inc. (Dynamic); Energy Market Exchange (EME); Epcon Industrial Systems, LP (Epcon); Fagin Partners (Fagin); Formation, LLC (FORM); Friedman Realty Group, LLC (Friedman); Greater Houston Natural Gas Vehicle Alliance (GHNGVA); Group CBS, Inc.; HeartPlace (Heart); Hewlett Packard Enterprise (Hewlett); Houston Electric Auto Association (HEAA); Jones & Spross, PLLC; Josh Bryant Engineering Services, LLC (Bryant); Kendra Scott, LLC (Kendra); Law Offices of Hunter Biederman & Burleson, P.L.L.C. (Biederman); Magnitude Software (Magnitude); Mid America Mortgage, Inc. (MAM); MUY! (MUY); Napa Flats Wood-Fired Kitchen (Napa); Nat G CNG Solutions (NatG); joint comment from North Central Texas Council of Governments and Regional Transportation Council, the Metropolitan Planning Organization for the Dallas-Fort Worth Area (NCTCOG and RTC); NORTHMAX (NORTH); OZEM Texas, L.L.C. (OZEM); Plug-In Texas (Plug-In); Revival Across America (Revival); Sierra Club, Lone Star Chapter (Sierra); Silva

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Law Group, PLLC (Silva); Stambush Staffing (Stambush); Stone & Horne, LLP (Stone); TAS Energy (TAS); Tesla; Texas Automobile Dealers Association (TADA); Texas Health Resources (THR); Texas Spine Consultants (TSC); The Cave Realty Team at Keller Williams (Cave Realty); The Friedkin Group on behalf of Gulf States Toyota, Inc. (GST); The Hunter Group; The Johnson Law Group (Johnson); VerifyComply.com (Verify); Warren Recruiting, Inc. (Warren); Westport; and Zimmerman Interests, Inc.

Significant comments are summarized below.

Nineteen commenters expressed general support for the proposed rules or for providing vehicle rebates in general. Twenty-one commenters expressed general support for the proposed rules or providing rebates in general and provided recommendations for changes. Six hundred and eighty-two commenters provided comments against parts of the proposed rulemaking and recommended changes. Ten commenters provided general comments not directly discussing the general or specific portions of the proposed rules.

The commission also received comments from eight individuals and two organizations that were submitted after the close of the comment period. These late comments are not listed and discussed in the Response to Comments section, but all of the late comments were generally similar to the other comments recommending that vehicles purchased outside of Texas be eligible for a rebate under the LDPLIP.

The majority of the comments dealt with the provision in §114.613(a) that requires manufacturers to submit a list of the eligible vehicles or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state and the underlying premise that "sell in this state" means that only vehicles sold by a licensed dealer in Texas are eligible for an incentive. Plug-In, GST, and TADA commented in support of the requirements. Twelve individuals, Bourke, Buchanan, and Magnitude commented in general support of the LDPLIP, but commented against the provision in §114.613 that only vehicles a manufacturer intends to "sell in this state" would be eligible for an incentive. An additional 637 individuals, Allpro, BSA, Biederman, Bryant, Cave Realty, Circular, DMMGT, DWG, Dynamic, EME, Epcon, Fagin, FORM, Friedman, HEAA, Heart, Hewlett, Johnson, Jones, Kendra, MAM, MUY, Napa, NORTH, OZEM, Revival, Silva, Stambush, Stone, TAS, Tesla, THR, TSC, Verify, and Warren also commented against only allowing vehicles sold by a dealer in Texas to be eligible for an incentive.

Comments were also received regarding the definition of "Light-duty motor vehicle" under §114.610(3), which includes vehicles with a GVWR of 10,000 pounds or less. NCTCOG, RTC, and Sierra commented in support of the GVWR limits, while CNG4, GHNGVA, NatG, and Westport recommended that the GVWR be raised to 14,000 pounds to allow for a greater number of vehicles to be eligible under the program.

GST and TADA recommended removal of the term "Retail Sale" from the definitions in §114.610 and removal of the references to the term in §114.612(a)(1)(D). They commented that the term could be eliminated because its only applicability was in relation to the references to "first title" and the definition of "Sell in this state" that were in prior drafts of the proposed rules, but were not included in the current version.

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NCTCOG and RTC commented regarding the provision in §114.612(a)(1)(D) regarding eligibility of vehicles in which a compressed natural gas or liquefied petroleum gas system was installed after the first retail sale, but within 500 miles of operation after the first retail sale. NCTCOG and RTC discussed their experience with administering grants in which the negative impacts of improper installation of aftermarket systems undermined the benefits of the project. NCTCOG and RTC recommended a requirement that any compressed natural gas or liquefied petroleum gas system that is installed after first retail sale be installed by a Qualified Vehicle Modifier (QVM).

NCTCOG and RTC also recommended that in the reports required to be submitted by manufacturers under §114.613(a), the manufacturers of compressed natural gas and liquefied petroleum gas systems include a list of QVMs authorized to install the systems on an eligible vehicle.

Two individuals, GHNGVA, and NatG requested that the rebates be provided retroactively for purchases that occurred prior to adoption of the rules.

GST, Plug-in, and TADA also recommended that the forms used for the applications be similar to the forms used in the previous program to allow dealers to verify the purchases. GST also commented in support of allowing for reservation of rebates for vehicles that need to be ordered.

Significant changes from proposal:

GST and TADA recommended removal of references to "retail sale," commenting that its only applicability was in relation to references to "first title" and the definition of "Sell in this state" that were in prior drafts of the proposed rules, but were not included in the published proposal.

Staff agrees that the use of the term "first retail sale" should be changed, but not for the reasons outlined by GST and TADA. Staff determined that the term "first sale," which was used in the previous version of the LDPLIP rules, would be more appropriate than using the term "first retail sale."

The reference to "first retail sale" in the definition of "New light-duty motor vehicle" under §114.610(5) is changed from the proposed text to refer to "first sale." Also, the definition of "Retail sale" under §114.610(6) is changed to refer to "First sale" and the definition is changed to read that the term has the meaning as defined under Texas Transportation Code, §501.002. Also, the term "first retail sale" referred to twice in §114.612(a)(1)(D) is changed to read "first sale."

Potential controversial concerns and legislative interest:

Staff is aware that some light-duty electric vehicles are sold directly by the manufacturer rather than a dealer in Texas. Stakeholders have differing views regarding the eligibility of these vehicles, as evidenced by the large number of comments received on this issue.

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Does this rulemaking affect any current policies or require development of new policies?

The adopted rulemaking would not affect current policies. New program policies and procedures would need to be developed to implement the new program.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Under THSC, §386.153(a), the commission is to adopt rules necessary to implement the LDPLIP. The repeal of the existing rules and adoption of the new rules are necessary because the existing rule criteria and requirements are not consistent with new THSC, Chapter 386, Subchapter D. The commission could not implement the LDPLIP using the existing rules. If this rulemaking does not go forward, funding allocated for the LDPLIP would either not be used or would need to be reallocated to another program established under the Texas Emissions Reduction Plan, as authorized under THSC, §386.252.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: December 1, 2017

Anticipated *Texas Register* adoption publication date: April 20, 2018

Anticipated effective date: April 26, 2018

Six-month *Texas Register* filing deadline: June 1, 2018

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Attachments:

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